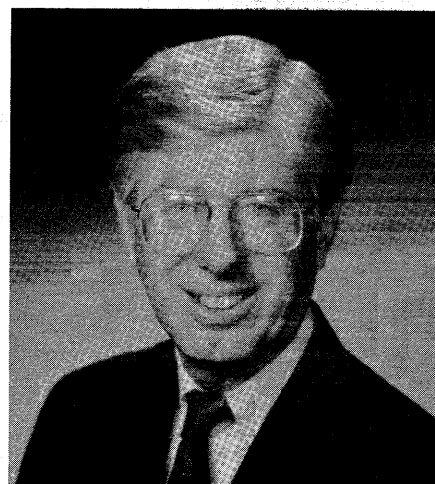


FENCE LAWS AND THE IOWA FARMER

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"Good fences make good neighbors."

— Robert Frost, "The Mending Wall."

As the line from the Robert Frost poem suggests, good fences do help make good neighbors.

It is a fact that partition fence disputes can strain even the best of relations. The statutory law to resolve such disputes is chapter 359A of the Code of Iowa.

Although the statute does not provide for oral agreements, adjoining landowners can enter into such contracts. Properly executed oral agreements for the apportionment of a partition fence are binding on the parties.

If the adjoining landowners cannot reach an oral agreement, a legal apportionment of the burden of erecting and maintaining partition fences may be attained either by: (1) written agreement of adjoining landowners, or (2) fence viewers' order. A written agreement describing the lands and the parts of the fence assigned to the landowners, signed and acknowledged, can bind the parties. The agreement should be filed and recorded in the recorder's office in the county or counties in which the lands are situated.

The services of the fence viewers can be invoked in the event that the adjoining landowners are unable to strike an accord. Fence viewers, which are comprised of the three township trustees, are empowered to determine any controversy arising under chapter 359A. Their authority, however, does not include resolving boundary disputes.

Upon request of any landowner, the fence viewers are required to give 5 days' notice in writing to the opposite party or parties, prescribing the time and place of the meeting to hear and determine the partition fence dispute. Published notice will suffice in the case of any nonresident of the county where the land is situated.

At the fence viewers' hearing a written order, signed and filed, is issued. The fence viewers' order: (1) Determines the obligations, rights, and duties of the respective parties to the dispute. (2) Assigns to each owner the portion of the partition fence for which the owner is responsible for the erection, maintenance, or repair. (3) Prescribes the time within which the parties are to comply with the order.

Provision is made in the statute for default. Initially, if the fence has not been erected, rebuilt, or repaired within the time prescribed in the order, the fence viewers shall require the complaining landowner to deposit a sum of money sufficient to comply with the order and to cover the fence viewers' fees and costs. If the defaulting party has failed to comply with the order within 30 days of the time prescribed in the order, the fence viewers shall cause the fence to be erected, rebuilt, or repaired. The complaining landowner will subsequently be reimbursed through a tax collection of the debt.

An order or decision of the fence viewers may be appealed

to the district court. The district court proceedings are not bound by the fence viewers' fact determination. They are merely admitted as evidence.

The effect of a legal apportionment of a partition fence is twofold. First, the Iowa statute binds the makers, their heirs, and subsequent grantees to the written agreement of the fence viewers' order. As such, the heirs and purchasers of the property affected by a legal apportionment of a partition fence are as bound as the original parties to the agreement or order.

Second, the court has held that one form of legal apportionment, including oral agreements sanctioned by the common law, constitutes a bar to another. For example, if contiguous neighbors have drafted a written agreement, the fence viewers are without jurisdiction to apportion the partition fence. A material change of circumstances, however, may limit that ruling.

A related issue concerns the adequacy of a partition fence. Upon application of either adjoining landowner and after prescribed notice, the fence viewers are empowered to determine all controversies arising under the tight fence provisions. The Iowa statute defines two types of wire partition fence as "tight," and the fence viewers have the power to determine an equivalent.

Basically, there are two ways in which a duty to maintain a tight fence may arise: (1) Either

adjoining landowner may make his or her portion of the partition fence tight, thus creating a similar duty on the part of the other, regardless of the land use. (2) If both the adjoining landowners or occupants are pasturing sheep or swine, each has a duty to sufficiently maintain the partition fence to restrain the animals.

The foregoing is inapplicable, however, if the adjoining tract of land is owned by a railroad. In that event, Iowa Code, chapter 327G prevails.

All railroads owning and operating a railway in Iowa, according to that statute, are required to erect, maintain,

and repair a fence on each side of the right-of-way to prevent livestock from getting on the tracks.

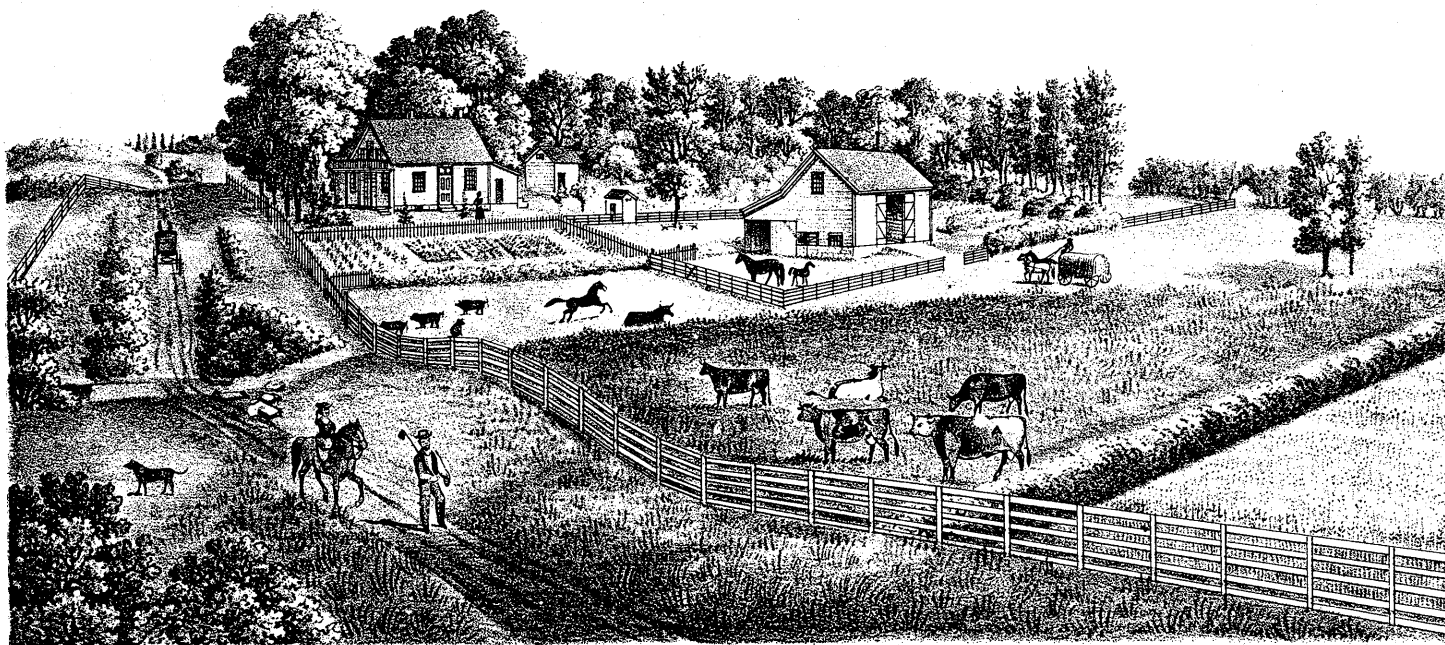
The fence, which shall not be less than 54 inches high, must be made hog tight upon the request of a landowner maintaining such a fence. Failure to fence its right-of-way will result in the railroad being liable to the landowner for any livestock killed or injured as a result of the want of a proper fence. Finally, the railroad is subject to double damages if it fails or neglects, within 90 days of receiving written notice, to pay for the livestock loss.

Recent railroad abandonment

of right-of-ways, of course, will affect liability for erecting and maintaining partition fences along the line. Chapter 359A will replace chapter 327G as the applicable statute. Accordingly, while landowners abutting right-of-ways have enjoyed the benefit of free fence, with the demise of the railroads they will have to assume the cost of those fences.

In the event that the partition fence, or any other fence, is unable to secure livestock to a designated field or pasture, liability must be affixed for any resulting damage.

This article first appeared in Wallaces Farmer. It was prepared by Assistant Attorneys General Tim Benton and Lynn Walding.



RESIDENCE OF ABNER HILL, LINN TWP., DALLAS CO., IOWA.

[Illustration from *Andreas Atlas*, published in 1872.]

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